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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND SPECIAL REPRESENTATIVES

Situation of human rights in Rwanda

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly, pursuant to Commission on Human Rights resolution 1997/66 and Economic and Social Council decision 1997/274, the attached report of the Special Representative of the Commission on the situation of human rights in Rwanda.

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Annex

REPORT OF THE SPECIAL REPRESENTATIVE OF THE COMMISSION ON HUMAN RIGHTS ON THE SITUATION OF HUMAN RIGHTS IN RWANDA

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I. INTRODUCTION

1. The present report is the first submitted to the General Assembly by the Special Representative on Rwanda of the Commission on Human Rights pursuant to Commission on Human Rights resolution 1997/66 and Economic and Social Council decision 1997/274. In paragraphs 20 and 21 of resolution 1997/66, the Commission requested the Special Representative "to make recommendations on how to improve the human rights situation in Rwanda, to facilitate the creation and effective functioning of an independent national human rights commission in Rwanda, and further to make recommendations on situations in which technical assistance to the Government of Rwanda in the field of human rights may be appropriate" and to report on these matters to the upcoming sessions of the Assembly and Commission. On behalf of the Commission, its Chairman appointed on 20 June 1997 Mr. Michel Moussalli, former Director of International Protection in the Office of the United Nations High Commissioner for Refugees (UNHCR), to the position of Special Representative, a decision approved by the Economic and Social Council in its decision 1997/274.

2. The mandate entrusted to the Special Representative differs significantly from that which the Commission had conferred upon the Special Rapporteur on the situation of human rights in Rwanda. At the third special session of the Commission on Human Rights, the High Commissioner for Human Rights, in a report on his mission to Rwanda of 11 and 12 May 1994 (E/CN.4/S-3/3), suggesting that the Commission appoint a special rapporteur on Rwanda who would examine all human rights aspects of the situation, including root causes and responsibilities for the recent atrocities and who would be assisted in the collection and analysis of information by a team of human rights field officers acting in close cooperation with the United Nations Assistance Mission in Rwanda and other United Nations agencies and programmes from within Rwanda, as well as from neighbouring countries where Rwandan refugees are located. In its resolution S-3/1,[1] the Commission approved the High Commissioner's proposal. Subsequently, the Council adopted decision 1994/223 endorsing that resolution.

3. Once it had become clear that a much more substantial field presence than that originally conceived to support the work of the Special Rapporteur and the Commission of Experts[2] was needed to deal with the enormity of the violations perpetrated during the genocide and civil war in 1994, the High Commissioner for Human Rights launched the Human Rights Field Operation in Rwanda (HRFOR). As set out in the Agreement between the High Commissioner and the Government of Rwanda on the Status of the Human Rights Mission in Rwanda, concluded in August 1994, the mandate of HRFOR is (a) to monitor ongoing human rights violations and help reduce and prevent such violations through the presence of human rights field officers, (b) to coordinate and cooperate with other international agencies to re-establish confidence with a view to encouraging the voluntary return of refugees from countries neighbouring Rwanda, (c) to implement projects of technical cooperation in the field of human rights, particularly to help Rwanda rebuild its destroyed judiciary, and (d) to spread human rights education at all levels of Rwandan society.

II. MISSION OF THE SPECIAL REPRESENTATIVE TO RWANDA

4. In order to establish contacts and a framework for dialogue with the Government of Rwanda, to assess the situation on the ground and to involve other relevant actors of the international community concerned with elements of the mandate entrusted to him, the Special Representative, in this capacity, undertook his first mission to Rwanda from 26 July to 4 August 1997, accompanied by a staff member of the Office of the High Commissioner for Human Rights. As the Chief of HRFOR was due to complete his tenure in the first week of August and as the present report was due to be submitted to the competent services of the United Nations by mid-September, the Special Representative's mission to Rwanda had to take place on relatively short notice.

5. During his mission, the Special Representative had an opportunity to meet with a wide range of Ministers and officials of the Government of Rwanda, including the Vice-President and Minister of Defence, the Prime Minister of Rwanda, the Minister of Foreign Affairs, the Minister of Justice together with the Secretary-General of the Ministry, the Minister of Youth and Culture, the President of the Supreme Court, the President of the Cour des Comptes (one of the five sections of the Supreme Court), the President of the Transitional National Assembly, and the President of the Commission of National Unity and Human Rights. The Special Representative wishes to express his deepest gratitude to all Ministers and officials of the Government of Rwanda for having received him on short notice and for the frank and positive exchange of views.

6. The Special Representative also had the benefit of a visit to the Prefecture of Kibungo. On 30 July 1997, he met with the Kibungo Team staff of HRFOR and visited the Kibungo Prison and a number of communal cachots in the prefecture. At these visits, he was received by the Director of the Kibungo Prison, the President of the Prefectural Tribunal of Kibungo, the President of the Specialized Chambers on genocide, and the Prosecutor of Kibungo. The Special Representative also held discussions with Colonel Ngoga, Kibungo Prefecture, who exercises his competence over the eastern part of Rwanda and the Prefecture of Kibungo. The visits to Kibungo Prison and the communal cachots and the discussions with the civilian, military, prison and judicial officials who met with the Special Representative provided valuable insight into the prevailing conditions of detention and the urgency of conducting fair and effective criminal trials for those accused of genocide and related acts. Finally, the Special Representative attended a human rights seminar for women, sponsored by HRFOR.

7. In Kigali, the Special Representative met with most of the Heads of diplomatic missions to Rwanda present in Kigali during his visit. He also had an opportunity to meet with the Special Envoy of the President of the United States to the Great Lakes who was visiting Kigali at the same time and with the Apostolic Nuncio of the Roman Catholic Church and an Abbey of the Episcopalian Church.

8. The Special Representative met also with the heads of the main United Nations agencies and governmental organizations, the Deputy Prosecutor of the International Criminal Tribunal for Rwanda, and the delegate of the International Committee of the Red Cross to Rwanda. The Special Representative

and the former Head of Ibuka, the genocide survivors' organization, held discussions on the special needs of genocide survivors.

9. On the basis of this initial visit to Rwanda and of these numerous meetings and discussions, the Special Representative submits a number of preliminary observations, even at this early stage of his mandate.

III. OBSERVATIONS

10. Given the tremendous scale and severity of the violations of human rights and humanitarian law that were perpetrated during the traumatic days of the Rwandan civil war in 1994 - a time which saw the brutal carrying out of one of this century's worst genocides - and the weak response of the international community at this critical time in Rwanda's history, the Government is to be commended for its cooperation with the members of the international community active in human rights matters in Rwanda.

11. In his various meetings with Government Ministers and officials, as well as with the members of the diplomatic corps and others, the Special Representative sensed a willingness on the part of the Government of Rwanda to bring its practices into better conformity with international human rights standards, as demonstrated particularly in its Agreement with the High Commissioner to have deployed on its territory a substantial presence of human rights field officers to carry out the Operation's mandate. The work of HRFOR, often carried out in difficult circumstances, remains essential to the confidence-building process and the fostering of full respect for international human rights standards and the rule of law.

12. The Government of Rwanda at all levels has realized that, although HRFOR at times must criticize its shortcomings in the field of human rights, such criticism is offered with a spirit of constructive dialogue and with a view to improving the human rights situation in general. However, in discussions with several higher-level Government officials, a certain discontent surfaced regarding the need for clear substantiation of allegations of human rights violations.

13. The Special Representative welcomes the access accorded by the Government of Rwanda to the human rights field officers and various other actors to all Prefectures throughout the country. However, following the worsening security situation in the Northwestern prefectures caused by armed insurgent groups and the tragic assassination of five HRFOR members, the United Nations Security Coordinator declared that the security situation in the Western prefectures as well as in parts of Byumba, Gikongoro, Gitarama, Kibungo and Kigali Rural prefectures had reached Phase IV. As long as these United Nations security regulations are in force, United Nations staff cannot visit those areas and carry out monitoring activities. The Special Representative wishes nevertheless to underline that, despite those most difficult circumstances, it is essential that HRFOR spare no effort to continue its monitoring activity as effectively as possible.

14. Having visited prisons and communal cachots, the Special Representative wishes to express his deep concern regarding the shocking conditions of detention and the large number of persons detained without dossiers setting out substantiated grounds for their arrest and detention. This concern was shared by many of the government officials with whom the Special Representative met during his mission. Many of these officials attributed the lack of progress in this area to the great damage sustained by the entire administration of justice during the 1994 civil war in Rwanda and the severe lack of resources to complete this task. As regards the difficult conditions of detention, efforts by some officials of the prison and communal detention centres to improve the situation did not go unnoticed. Measures designed to relieve some of the harshness of these conditions, such as allowing families of detainees to visit and bring them food, and providing female detainees the opportunity to be with their small children on prison grounds but outside the prison walls, are to be commended and encouraged.

15. The Special Representative commends the work of HRFOR and the spirit of cooperation and support the Government has shown for its work, and stresses the need for this relationship to continue until effective national organs in the protection and promotion of human rights can be put in place. In this connection, the Special Representative was very impressed with the commitment and dedication of the HRFOR staff and, equally, with the substantial presence and involvement invested by several Governments, agencies and non-governmental organizations in providing assistance to Rwanda in the field of human rights. However, there is a definite need to coordinate better and to streamline the efforts of these various actors in order to avoid duplication and render them more effective. There is also a definite need to give adequate administrative financial support to HRFOR. Indeed, as the High Commissioner for Human Rights has repeatedly underlined over the past three years, HRFOR suffers from a chronic staffing instability due to a large extent to lack of regular administrative financial support.

IV. BASIS OF PROMOTION AND PROTECTION OF THE HUMAN RIGHTS IN RWANDA

16. There exists in Rwandan law and political options a solid foundation upon which to base a programme of human rights promotion and protection in the country. The legal and political underpinnings of human rights promotion and protection in Rwanda are to be found, notably, in:

(a) The Peace Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front, signed at Arusha, United Republic of Tanzania, on 4 August 1993 (A/48/524-S/26915, annex I);

(b) The several protocols annexed to the Arusha Peace Agreement, especially:

(i) The Protocol on the Rule of Law of 18 August 1992 (ibid., annex III);

(ii) The Protocol on Power-Sharing Within the Framework of a Broad-based Transitional Government, signed partly on 30 October 1992 and partly on 9 January 1993 (ibid., annex IV);

(iii) The Protocol on Miscellaneous Issues and Final Provisions, signed at Arusha on 3 August 1993 (ibid., annex VII);

(c) The Constitution of 10 June 1991, as amended;

(d) The Rwandese Patriotic Front (RPF) declaration concerning the setting up of institutions of 17 July 1994;

(e) The protocol on the setting up of national institutions signed on 24 November 1994 between the various political parties.

17. On 16 April 1975 Rwanda acceded to a host of international human rights instruments, including the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights (resolution 2200 A (XXI)), 1966. In addition, on 15 July 1983, Rwanda ratified the African Charter on Human and Peoples' Rights, 1981. On 15 February 1995, the Government of Rwanda issued a decree which lifted, with immediate effect, any reservations previously entered by Rwanda to any of the international human rights instruments to which it was a party. Thus, Rwanda has undertaken to respect the norms set out in a broad range of international human rights conventions and instruments.

18. In a judgment delivered on 26 July 1995, the Rwandan Constitutional Court held that a law which had been voted by Parliament to suspend, in respect of persons accused of genocide and related offences, the application of the rules of law contained in the Rwandan Criminal Procedure Code which guarantee the rights of the accused with regard to arrest and pre-trial detention, was unconstitutional and in violation not only of the Basic Law of Rwanda, but also of the Universal Declaration of Human Rights, 1948, as well as the African Charter on Human and Peoples' Rights, 1981. In line with this judgment, this law was allowed to lapse.

19. Although under article 32 of the Agreement between the Government of Rwanda and the United Nations on the Status of the United Nations Human Rights Mission in Rwanda, the Government of Rwanda can, upon written notice to the United Nations, demand and obtain the total or partial withdrawal of the United Nations Human Rights Mission within 30 days of such notice, there is no sign that the Government of Rwanda is about to exercise this prerogative.

20. The foregoing clearly shows the existence in Rwanda of a solid legal basis to promote and protect human rights in the country in accordance with international human rights standards and instruments. It remains for the Government of Rwanda and the international community to work out the most appropriate mechanisms and framework for the attainment of this objective.

V. INVOLVEMENT OF THE INTERNATIONAL COMMUNITY IN TECHNICAL ASSISTANCE IN THE FIELD OF HUMAN RIGHTS IN RWANDA

21. In paragraph 4 of its resolution 48/141, the General Assembly decided that the High Commissioner for Human Rights would be the United Nations official with principal responsibility for United Nations human rights activities under the direction and authority of the Secretary-General. HRFOR was set up at the request of the High Commissioner pursuant to General Assembly resolution 48/141, Commission on Human Rights resolution S-3/1, Security Council resolution 935 (1994), and to the Agreement between the United Nations and the Government of Rwanda on the Status of the Human Rights Mission in Rwanda. HRFOR was charged, inter alia, with the implementation of programmes of technical cooperation in the field of human rights, particularly in the area of the administration of justice.

22. HRFOR's 1997 Action Programme sets out the following objectives to be pursued in the areas of administration of justice and legal reform, penitentiary administration, training and institutional support, and genocide response and vulnerable groups: (a) to strengthen the independence of the judiciary; (b) to secure improvements in the performance of courts and personnel at all levels of the judicial system; (c) to secure improvements to Rwandan national law and practice in compliance with international standards; (d) to evaluate the performance of the Rwandan criminal justice system within the framework of the prosecution before domestic courts of persons accused of genocide and other crimes against humanity committed in Rwanda since 1 October 1990; (e) to increase public awareness of Rwandan laws and judicial practices and procedures, including those related to the promotion and protection of human rights; (f) to serve as a reliable source of information on the Rwandan justice system; (g) to strengthen Rwandan institutions and to enhance their capacity to contribute effectively towards the promotion and protection of human rights in Rwanda; (h) to make human rights documents and materials available to HRFOR central and field staff and to the general public; (i) to secure improvements in conditions of detention in Rwandan prisons and local detention centres; (j) to reduce and, if possible, eliminate overcrowding in places of detention and imprisonment; (k) to improve the performance of the penitentiary administration; (l) to document and produce communal histories of the 1994 genocide; (m) to improve the situation and conditions of certain vulnerable groups in Rwandan society; and (n) to assure the protection of witnesses in the trial before the International Criminal Tribunal for Rwanda, or before domestic courts, of persons accused of participation in the 1994 genocide and crimes against humanity committed in Rwanda since 1 October 1990.

23. Building upon these objectives, in August 1997, HRFOR produced a global technical cooperation project document encompassing activities that had been specifically proposed or requested by potential beneficiaries of the project, particularly government officials at the national and local levels (notably those of the Ministries of Justice, Defence and Interior), authorities of the Transitional National Assembly and leaders of the local non-governmental organization community. At the time of the writing of this report, the global project document was under consideration by the Office of the High Commissioner for Human Rights. The project covers five main areas of activity: (a) human rights education and training for the judiciary, the military, the gendarmerie,

the police, prison administration personnel, other civil servants and members of local human rights non-governmental organizations; (b) capacity-building in the sector of civilian and military justice; (c) capacity support for human rights non-governmental organizations; (d) the popularization of human rights through formal and informal education and promotion activities; and (e) support for victims of genocide and vulnerable groups. Its direct beneficiaries will be members of the armed forces, the gendarmerie and the communal police, judicial and penitentiary administration personnel, local-level administrative officials, local non-governmental organizations, and survivors of genocide.

24. HRFOR is not the only United Nations agency that has, in the past two or three years, carried out activities in Rwanda within the domain of technical cooperation in the field of human rights, particularly in the area of the administration of justice. Other United Nations agencies have been active in this domain in Rwanda. They include the United Nations Development Programme (UNDP), UNHCR, the United Nations Children's Fund (UNICEF), and the World Food Programme (WFP). Apart from United Nations agencies, other international organizations such as the International Committee of the Red Cross (ICRC), Avocats sans frontières, Réseau des Citoyens, the International Organization for Migration (IOM) and Juristes sans frontières have been involved, as have a host of multilateral and bilateral donors, notably the European Union (and, bilaterally, such of its member States as Belgium, Germany, Ireland, the Netherlands, Sweden and the United Kingdom of Great Britain and Northern Ireland), Canada, Switzerland and the United States of America.

25. The assistance provided or promised by the various international agencies, institutions and organizations has covered such areas as (a) the rehabilitation of the Supreme Court, the Courts of Appeal, the Courts of First Instance, cantonal courts, prosecutors' offices, the Judicial Training Centre, the Ministry of Justice, the central office of the inspecteurs de police judiciaire and housing for judicial personnel; (b) the provision of equipment and office materials to those judicial organs, institutions and services; (c) legal representation by foreign lawyers; (d) the training of various categories of judicial personnel; (e) the provision of advisory and technical support to the Ministry of Justice and to prosecutors and inspecteurs de police judiciaire; (f) the creation of information systems and provision of documentation; (g) support to legislative reform initiatives; (h) the conduct of civic education and public awareness campaigns; (i) the training of various categories of prison staff; (j) the provision of administrative and managerial support to prisons and detention centres; (k) the construction and extension of prisons and detention centres; and (l) the provision of training and operational support to the gendarmerie and the communal police.

26. The simultaneous involvement of these bodies is indeed impressive and demonstrates the profound desire of the international community to assist Rwanda in the promotion and protection of human rights. However, utmost care should be given to avoid unnecessary duplication, confusion, and a sense of adverse competition among the various actors of the international community involved in human rights activities in Rwanda as it could affect the willingness of donor countries to contribute to effective and essential projects and could even prove to be an embarrassment to some concerned departments of the Rwandese Government. Indeed, the Special Representative understands that, although HRFOR has a

substantial monitoring presence in Rwanda, it has so far not received adequate financial support to fund directly most of its projects of technical cooperation.

27. The Special Representative would therefore like to recommend that more efforts should be devoted - on the part of the various humanitarian and human rights actors and members of the international community involved in human rights activities in Rwanda - to ensuring greater cooperation and coordination of their activities, in particular in the area of technical assistance for human rights projects agreed upon with the Government of Rwanda. It would indeed be highly desirable if all the actors involved in human rights activities in Rwanda would agree together on a common list of priority projects with an implementation timetable and adequate financial support, allowing also the High Commissioner for Human Rights, who is the United Nations official with principal responsibility for United Nations human rights activities, to play, through HRFOR, the leading role in technical cooperation in the field of human rights.

VI. CREATION AND EFFECTIVE FUNCTIONING OF AN INDEPENDENT NATIONAL HUMAN RIGHTS COMMISSION IN RWANDA

28. The commitment to the creation of an independent national human rights commission in Rwanda is to be found in the Protocol on the Rule of Law concluded between the Government of the Republic of Rwanda and the Rwandese Patriotic Front on 18 August 1992 (A/48/824-S/26915, annex III), which forms an integral part of the Arusha Peace Agreement of 4 August 1993. Article 15 of the Protocol on the Rule of Law obliges the parties to establish an independent national human rights commission with powers to investigate, without any time limitation, human rights violations committed by anyone on Rwandan territory, particularly organs or agents of the State. Article 15 stipulates that the commission should be given the necessary means to accomplish its mission efficiently and that the commission should utilize its findings to sensitize and educate the population about human rights, and, wherever necessary, institute legal proceedings.

29. In October 1995, the Government of Rwanda presented in Parliament a bill for the creation of a national human rights commission in conformity with article 15 of the Protocol on the Rule of Law. In November 1995, while the bill was before Parliament, HRFOR reviewed it according to the international standards and guidelines concerning the structure and operation of independent national human rights institutions (in particular, the "Paris Principles"). HRFOR concluded that the bill expressed some important first principles for the proposed commission, but that there were a number of serious shortcomings as regards its independence, jurisdiction and powers, accessibility, operational efficiency and accountability. HRFOR shared these concerns with the Ministry of Justice, which had drafted the bill, as well as with members of the Transitional National Assembly. Because of the many important issues to be resolved, in December 1995, the Government decided to withdraw the bill from Parliament for further review.

30. The Office of the High Commissioner sponsored the attendance of two Rwandan participants (the then Director-General in the Ministry of Justice and the Chairman of the Commission on National Unity and Human Rights of the National

Assembly) to the first Regional Conference of African National Institutions for the Promotion and Protection of Human Rights, held from 5 to 7 February 1996 at Yaoundé, Cameroon, with a view to enhancing the awareness of key officials in the Government of Rwanda of the experiences gained by national human rights commissions in other African countries.

31. The Special Representative understands that a new draft law has been prepared for submission to the Transitional Parliamentary Assembly. A fresh assessment will have to be made in light of the various recommendations previously submitted. It is indeed highly desirable for the protection and promotion of human rights in Rwanda that there be a credible, independent and effective national human rights commission that could substantially contribute to a climate of confidence and reconciliation in Rwanda. The Special Representative was pleased to note that all higher-level Government officials with whom he met during this mission to Rwanda were fully aware of this need and promised to support the activities of such a national human rights commission once established by Parliament.

32. Under the global project document detailing technical cooperation with the Government of Rwanda in the field of human rights, HRFOR envisages the assessment of the equipment and staffing needs of the commission as well as the provision of basic training of staff members to enable the commission to commence effectively and to carry out qualitative work. It would also be beneficial if this commission would be assisted in establishing consultative contacts with the United Nations, regional organizations and national human rights commissions.

VII. RECOMMENDATIONS

33. In the light of the foregoing, the Special Representative wishes to recommend:

(a) That the Government of Rwanda and the international community enhance their close cooperation to maintain and develop the most suitable conditions for the promotion and protection of human rights in Rwanda;

(b) That greater effort be devoted by the various humanitarian and human rights actors and members of the international community involved in human rights activities in Rwanda with a view to enhancing mutual cooperation, coordination, and complementarity, in particular in the area of technical assistance for human rights projects agreed upon by the Government of Rwanda;

(c) That, within this strengthened framework of cooperation and coordination between the various humanitarian and human rights actors and members of the international community, an agreed list of priority projects be established, together with a timetable indicating the implementing agency or body, time-frame for realization of the project and its financial support;

(d) That the High Commissioner for Human Rights, who is the United Nations official with principal responsibility for United Nations human rights activities, play the lead role through her Field Operation, in the establishment

of this strengthened framework of cooperation and of a timetable of priority projects;

(e) That States and international donors provide adequate financial support to enable the timely realization of priority projects and the effective functioning of the High Commissioner's Human Rights Field Operation in Rwanda;

(f) That, in light of the conditions of detention, the international community concentrate immediately on providing all necessary technical assistance to enable the Government to establish urgently a dossier for every detainee. This would allow for the determination of who should be released immediately and who should be brought to trial within the shortest time possible. Moreover, the various actors of the international community concerned with the provision of assistance to the administration of justice should accord top priority to the twin problems of the conditions of detention and the need to speed up the genocide trials, without sacrificing adherence to international human rights standards governing the right to fair trial;

(g) That the competent Rwandese authorities pursue their efforts to establish an independent and credible national human rights commission based on recognized regional and international norms governing the composition and the mandate of such commissions and that the international community provide the necessary financial support for its effective functioning.

Notes

[1] In paragraphs 18 and 19 of its resolution S-3/1, the Commission requested the "Chairman to appoint a special rapporteur, for an initial period of one year, to investigate at first-hand the human rights situation in Rwanda and to receive relevant, credible information on the human rights situation there from Governments, individuals and intergovernmental and non-governmental organizations, including on root causes and responsibilities for the recent atrocities, on a continuing basis, and to avail himself or herself of the assistance of existing mechanisms of the Commission on Human Rights" and requested "the existing mechanisms of the Commission on Human Rights, including the Special Rapporteur on extrajudicial summary or arbitrary executions, the Special Rapporteur on the question of torture, the Representative of the Secretary-General on internally displaced persons, the Working Group on Enforced or Involuntary Disappearances and the Working Group on Arbitrary Detention, as well as human rights treaty bodies, where appropriate, to give urgent attention to the situation in Rwanda and to provide, on a continuing basis, their full cooperation, assistance and findings to the Special Rapporteur and to accompany the Special Rapporteur in visiting Rwanda whenever necessary".

[2] The Commission of Experts on Rwanda was created by the Security Council through the adoption of resolution 935 (1994) of 1 July 1994 to conduct an investigation into the violations committed in the territory of Rwanda, to consider the question of individual criminal responsibility for the alleged violations of international human rights and humanitarian law, including possibly genocide, and to make recommendations as to how the perpetrators could be brought to justice.